IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6494 OF 2003

1. Mrs.SatvantKaur Harjitsingh Vig
2. Mr.Harvindersingh Harjitsingh Vig
3. Ms Gurupritkaur Harjitsingh Vig

All R/at 2/19 Sardar Nagar 4,
Sion Koliwada, Mumbai--400 037. : Petitioners

V/s.

1. Smt.Aarti Jayant Lalwani,
Room No.105 TIC, Babale,
Thane-Belapur Road, Thane.
(Writ Petition is dismissed as
against Resp. no.1 as per Court's
order dated 5.12.2003).
2. New India Assurance Co. Ltd.
@ Regd. Office, 87 M.G. Road,
Mumbai--23.
3. State of Maharashtra
through Home Secretary, TR 5
Mantralaya, Mumbai. : Respondents

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Mr.M.B.Kotak for the petitioners.

Mr.D.R.Mahadik for Mr.S.R.Singh for respondent no.2.

Mr.S.R.Nargolkar, Asstt. Govt. Pleader, for resp. no.3.

CORAM : S.RADHAKRISHNAN &
S.A.BOBDE, JJ.

November 2, 2004.

ORAL JUDGEMENT (Per Bobde,J.)

1. This Writ Petition under Article 227 of the Constitution of India is preferred by the widow and two children of the deceased Harjitsingh Vig against the refusal of the Motor Accident Claims Tribunal, Mumbai, to grant the compensation on no fault basis as contemplated by section 140 of the Motor Vehicles Act, 1988, hereinafter referred to as the "Act".

2. One Harjitsingh Vig, a taxi driver, died in the following circumstances:-

On 12.1.1999 he was admitted to Sion Hospital and then to Matalaxmi Hospital since he was suffering from high fever. He was also said to be suffering from diabetes. On 13.1.1999 the Doctors advised that he be removed to Leelavati Hospital. His widow, therefore, engaged an ambulance bearing registration no.MMK-4119 for taking him to Leelavati Hospital.

3. The ambulance proceeded towards Leelavati Hospital at Bandra with the siren on. When it was negotiating Mahim

junction, a car collided with it. According to the petitioners, the deceased who was on a stretcher inside the ambulance fell on the floor of the ambulance. The ambulance was rendered immobile, because it was entangled with the car. The Petitioner no.1 pleaded for help to remove her husband to Leelavati Hospital but none came forward to help her. The traffic police were busy in dispersing the crowd and called for a van to tow the immobilised ambulance to the hospital, instead of removing the deceased to the hospital by some other method. This caused a delay of about two-and-a-half hours in reaching the hospital.

4. There the deceased was admitted to the Critical Care Unit but, however, died of cardiac arrest due to a hypovolaemic shock. The Doctors told the petitioner no.1 that valuable time was lost on the road and that the deceased succumbed to multiple dyfunction of various organs on account of delay in the treatment.

5. Petitioner no.1’s story narrated above in her affidavit dated 2.12.2003 before this Court has not been controverted by the respondents.

6. The Leelavati Hospital and Research Centre has issued a certificate certifying that the deceased was admitted in

a state of hypovolaemic shock with acute renal failure. It shows that he was suffering from fever for the last two days. The cause of death is specified as Cardio Respiratory arrest with Septicaemia C with Multi Organ Dysfunction.

7. We have been referred to a passage from a text-book on medicine which states that a hypovolaemic shock results from a decrease in circulating volume which results in poor tissue perfusion. The commonest cause of hypovolaemic shock is trauma resulting in external or concealed haemorrhage from blunt or penetrating injuries. It is also stated that it can also result from certain other condition such as severe water loss as in diabetes, etc. Hypovolaemia from any cause if severe and untreated, causes increasingly poor perfusion of tissues, ischaemia and injury to tissue cells, and ultimately death. In the present case, the certificate clearly shows that the deceased’s death was preceded by a hypovolaemic shock.

8. The petitioners moved an application for compensation under section 140 of the Act and submitted the certificate issued by the hospital. This application has, however, been rejected by the learned Member of the Motor Accident Claims Tribunal because it has not been established by evidence that the deceased received a hypovolaemic shock

due to the accident. It also observed that the post-mortem report is not produced. It was further observed that "the record does not show" that the deceased received any injury in the accident and that there was no evidence that the deceased died due to delayed treatment. In short, the Tribunal seems to be of opinion that it cannot be said that the deceased died due to hypovolaemic shock which was a result of vehicular accident and, therefore, the deceased is not entitled to any compensation on a no-fault basis.

9. Having heard the parties at length, we are of view that the Tribunal's judgement suffers from an error of law apparent on the face of the record. Sub-section (1) of section 140 of the Act reads as follows:-

> "**140. Liability to pay compensation in certain cases on the principle of no fault**.-- Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or

> disablement in accordance with the provisions of this section."
>
> (Emphasis supplied)

On a plain reading, it is clear that the owner of the vehicle becomes liable to pay compensation in respect of a death which has resulted from an accident arising out of the use of a motor vehicle. The phrase "has resulted from" occurring in the aforesaid section does not require the death to have occurred in the accident itself. The section is attracted even where death is the result or the consequence of an accident arising out of a motor vehicle. Therefore, what is necessary to see is whether the death is the consequence of an accident arising out of the use of the motor vehicle.

10. In this case, the deceased did not die in the collision at Mahim junction when a car collided with the ambulance in which he was driven in to Leelavati Hospital. There is no effective denial to petitioner no.1’s version that as a result of the impact, the deceased who was ill enough to require hospitalisation fell off the stretcher on the floor of the ambulance. In all probability, this must have caused trauma which is stated in the medical text as the "commonest cause of hypovolaemic shock" which resulted in his death.

11. Even otherwise, we are of view that the death of the deceased at Leelavati Hospital can be said to have resulted from an accident at Mahim junction which caused the deceased to be admitted about two-and-a-half hours later than he would have been had there been no accident.

12. We are of view that it is sufficient for the case to be covered by section 140 of the Act if the death is the result of the accident arising out of the use of a motor vehicle. It is not necessary that death must take place at the moment of the accident. We must give the word "resulted" occurring in the section a plain meaning which is "as a consequence or outcome of something". The learned Motor Accident Claims Tribunal fell into error in denying the relief to the petitioners on the grounds that it has not been established by cogent evidence that the deceased received shock due to the vehicular accident. All that was necessary for the Motor Accident Claims Tribunal was to see if the death was the result of the accident. In either case, whether on account of shock or on account of delay, it is clear that had it not been for the accident, the deceased would have reached Leelavati Hospital safely. This may be safely inferred from the uncontroverted statement of petitioner no.1 that the Doctors informed petitioner no.1 that the deceased

succumbed to multiple dyfunction of various organs on account of delay in the treatment.

13. The learned counsel for the respondent no.2 Insurance Company, though not entitled to challenge the injuries sustained by the victim of a vehicular accident vide a judgement of this Court in Oriental Fire and General insurance Co. Ltd. v. Aleixo Fernandes & Ors. (1986 ACJ 1137) opposed grant of compensation on another ground. According to the learned counsel, compensation cannot be granted unless the post-mortem report is produced before the Court.

14. Mr.Kotak, learned counsel for the petitioners, however, rightly relied on rule 254 of the Maharashtra Motor Vehicles Rules, 1989. Sub-rule (5) of the said Rules reads as follows:-

> "(5) There shall be appended to every such application, the following documents, namely:-
>
> (i) injury certificate or in case of death, post-mortem report, or Death Certificate;
>
> (ii) True copy of First Information Report

of Police Station Diary Entry or Traffic Accident Report duly certified by the Police Officer or the Police Station concerned, in respect of the accident, and

(iii) Certified copy of the Form comp 'AA' of the First Schedule mentioned in sub-rule (8) of this rule."

The rule clearly contemplates that a Death Certificate of the kind produced by the petitioners should also be relied on. The learned counsel for the petitioners did not point out any rule which requires a Death Certificate from only a specified authority. Even otherwise, having regard to the circumstances indicated above, we are of view that no fault compensation can be a validly granted in this case.

15. In the result, the petition succeeds and the impugned judgement and order dated 2.5.2003 of the Motor Accident Claims Tribunal, Mumbai, is quashed and set aside. Respondent no.2 is directed to pay to the petitioners Rs.50,000/- along with interest at the rate of 12% per annum from the date of the application till payment. The the rule is made absolute in the aforesaid terms.

Sd/-

(S. RADHAKRISHNAN, J.)

Sd/-

(S.A. BOBDE, J.)